

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

Brian L. Brown,

Petitioner,

v.

//

**CIVIL ACTION NO. 1:12CV32
(Judge Keeley)**

Terry O'Brien

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On February 27, 2012, the pro se petitioner, Brian L. Brown ("Brown"), filed a petition with the Court pursuant to 28 U.S.C. § 2241. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with LR PL P 2. On that same date, Brown received Notice of Deficient Pleading (dkt. no. 4). He then moved for an extension of time to respond to the Notice of Deficient Pleading, which the Court granted on March 27, 2012. (Dkt. No. 8). Brown still failed to file a timely response to the Notice of Deficient Pleading, and, on May 22, 2012, was sent an Order to Show Cause. (Dkt. No. 12). Again, Brown did not respond.

On June 13, 2012, Magistrate Judge Kaull issued an Opinion and Report and Recommendation ("R&R"), in which he recommended that Brown's § 2241 petition be denied and dismissed with prejudice. (Dkt. No. 16). The magistrate judge determined that Brown is not entitled to file the instant § 2241 petition because in it he challenges the conditions of his confinement, and not the fact or

ORDER ADOPTING REPORT AND RECOMMENDATION

duration of his confinement. See Preiser v. Rodriguez, 411 U.S. 475, 499-500 (1973).

The R&R also specifically warned Brown that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. Brown did not file any objections. He thus waived his appellate rights in this matter, and relieved the Court of any obligation to conduct a de novo review of the issue presented.¹ See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

Consequently, finding no clear error, the Court:

- **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 16);
- **DENIES** the § 2241 petition (dkt. no 1) **WITHOUT PREJUDICE**;
- **DENIES AS MOOT** the plaintiff's Motion for Leave to Proceed In Forma Pauperis (dkt. no. 2) and Motion for Writ of Assistance (dkt. no. 14); and
- **ORDERS** that this case be stricken from the Court's docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of

¹ On October 16, 2012 (dkt. no. 21), and November 8, 2012 (dkt. no. 25), the Court granted Brown's motions for extensions of time to respond to the R&R.

ORDER ADOPTING REPORT AND RECOMMENDATION

Court to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: February 5, 2013.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE